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Message Text

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ORIGIN L-03

INFO OCT-01 ARA-16 EUR-25 ISO-00 COA-02 INT-08 COME-00 H-03

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C O N F I D E N T I A L STATE 245037

E.O. 11652: GDS
TAGS: PBOR, EFIS, BR, MX, BF, CA
SUBJECT; JURISDICTION OVER FISHERIES

1. SUMMARY: EMBASSIES ASSESSMENTS ARE REQUESTED OF EFFECT OF US CLAIM TO EXCLUSIVE JURISDICTION OVER LOBSTER BEYOND THE TERRITORIAL SEA, AS A CREATURE OF THE CONTINENTAL SHELF, ON US LOBSTER AND SHRIMP FISHERIES OFF HOST COUNTRIES. IN VIEW NATURE OF PROBLEM, DISCUSSION OF ISSUES WITH FOREIGN OFFICIALS IS NOT RPT NOT DESIRABLE. END SUMMARY.

2. AFTER LONG DELAY OCCASIONED BY RESISTENCE OF NEW ENGLAND REPRESENTATIVES WITH COASTAL FISHING CONCERNS, CONGRESS IS ABOUT TO ENACT LEGISLATION IMPLEMENTING
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US-BRAZIL FISHING AGREEMENT. IN HOUSE, COMPROMISE WAS

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REACHED ON SEPARATE BILLS IMPLEMENTING AGREEMENT AND DECLARING LOBSTER A CREATURE OF THE CONTINENTAL SHELF, AND HENCE UNDER EXCLUSIVE US CONTROL. (THE CONTINENTAL SHELF OFF NEW ENGLAND IS BROAD.) THERE WOULD BE STRONG REASONS FOR DEPARTMENT TO RECOMMEND VETO OF SEPARATE LOBSTER BILL. IN THE SENATE, THE TWO WERE COMBINED IN ONE BILL. THE US-BRAZIL AGREEMENT EXPIRES AT THE END OF THE YEAR, AND BRAZIL IS RELUCTANT TO RENEW IT BEFORE WE MEET OUR OWN OUTSTANDING OBLIGATIONS.

3. THE US LEGISLATION WOULD APPLY SPECIFICALLY TO THE AMERICAN, OR NORTHERN, LOBSTER, NOT TO SPINEY LOBSTER. IN CONSIDERING THE FOLLOWING IT SHOULD BE KEPT IN MIND THAT THERE ARE SIGNIFICANT DIFFERENCES BETWEEN THE AMERICAN LOBSTER AND SHRIMP IN THAT THE SHRIMP REGULARLY ENTER THE WATER COLUMN AND SWIM WHILE THE AMERICAN LOBSTER DOES NOT, AND WHEN IT DOES ENTER THE WATER COLUMN IT IS FOR A VERY BRIEF PERIOD. IN THIS RESPECT THE CHARACTERISTICS OF THE SPINEY LOBSTER ARE VERY SIMILAR TO THOSE OF THE AMERICAN LOBSTER, WITH THE SPINEY LOBSTER PERHAPS JUST A BIT MORE MOBILE.

4. THE US HAS NOT IN THE PAST CONSIDERED LOBSTER A CREATURE OF THE SHELF. WE WISH TO ASSESS THE EFFECT OF A US CLAIM NOW, IN PARTICULAR AS FOLLOWS:

A) FOR NASSAU: DESPITE FACT THAT DIFFERENT TYPES OF LOBSTER ARE INVOLVED, GCOB WILL PROBABLY CONSIDER THAT A US CLAIM AUTOMATICALLY CONSTITUTES RECOGNITION OF BAHAMIAN JURISDICTION OVER LOBSTER ON THE CONTINENTAL SHELF BEYOND 12 MILES. HOWEVER, DOMESTIC PRESSURE FOR ACCESS WILL CONTINUE. WHAT ARE THE PROSPECTS FOR GCOB AGREEING TO PERMIT CONTINUATION OF US LOBSTER FISHING, AT WORST AT CURRENT LEVELS?

B) FOR BRASILIA AND MEXICO CITY: SINCE THE ARGUMENT THAT LOBSTER ARE NOT A CREATURE OF THE SHELF TURNS IN PART ON THE REJECTION BY THE 1958 LOS CONFERENCE OF A MEXICAN PROPOSAL TO INCLUDE LANGUAGE COVERING CONFIDENTIAL

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SHRIMP, THERE IS A RISK OF CONVERSE ARGUMENT BEING MADE AGAINST THE US IF WE CLAIM LOBSTER. WITH RESPECT TO BRAZIL, WHAT IS THE LIKELIHOOD THAT BRAZIL WILL BELIEVE IT DESERVES A SHRIMP AGREEMENT SIGNIFICANTLY MORE FAVORABLE TO IT BECAUSE OF A US LOBSTER CLAIM. WITH RESPECT TO MEXICO, WHAT IS THE LIKELIHOOD THAT A US LOBSTER CLAIM WILL TIP THE BALANCE IN FAVOR OF A MEXICAN CLAIM THAT SHRIMP ARE A CREATURE OF THE SHELF

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OR A 200 MILE CLAIM OVER ALL FISHERIES?

C) FOR ALL ACTION EMBASSIES: WHILE US LOS CONFERENCE PROPOSALS WOULD PLACE BOTH LOBSTER AND SHRIMP UNDER COASTAL STATE CONTROL, THIS WOULD BE SUBJECT TO A DUTY TO PERMIT FOREIGN FISHING TO THE EXTENT THE COASTAL STATE DOES NOT FULLY HARVEST THE STOCKS, AND TO ACCOMMODATE TRADITIONAL DISTANT WATER FISHING INTERESTS, BOTH OF WHICH WOULD BE SUBJECT TO COMPULSORY DISPUTE SETTLEMENT. EMBASSIES WILL APPRECIATE THAT THESE LIMITATIONS ARE CRITICAL TO PROTECTION OF US DISTANT WATER INTERESTS, AND ARE PROBABLY THE MINIMUM DISTANT

WATER STATES LIKE USSR AND JAPAN WOULD ACCEPT IN ANY EVENT. TO WHAT EXTENT WILL OUR ABILITY TO PERSUADE HOST GOVERNMENTS TO ACCEPT LIMITATIONS AT LOS CONFERENCE BE AFFECTED BY A US CLAIM OF EXCLUSIVE JURISDICTION OVER LOBSTER? TO WHAT EXTENT WOULD A SIMULTANEOUS STATEMENT ANNOUNCING THAT MAXIMUM UTILIZATION AND TRADITIONAL FISHING LIMITATIONS WILL BE APPLIED BY USG TO LOBSTER ATTENUATE ADVERSE EFFECTS, IF ANY, ON THIS POINT AND ON POINTS A AND B ABOVE? NO RPT NO DECISION HAS BEEN MADE THAT IT WOULD BE POSSIBLE DOMESTICALLY TO ISSUE SUCH A STATEMENT.

5. RESPONSES ARE REQUESTED BY COB DECEMBER 18.

6. FOR OTTAWA: EMBASSY MAY, IN ITS DISCRETION, WISH TO COMMENT ON POSSIBLE CANADIAN REACTIONS. RUSH

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